

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BP WEST COAST PRODUCTS, LLC,
Plaintiff and Counter-Defendant,
v.
CROSSROAD PETROLEUM, INC., ET
AL.,
Defendants and Counter-Claimants.

AND RELATED CONSOLIDATED
ACTIONS

Case No.: 12cv665 JLS (JLB) (Lead
Case)

**ORDER (1) GRANTING BP'S PMPA
MOTION FOR SUMMARY
JUDGMENT; (2) DENYING BP'S
INDEMNITY MOTION FOR
SUMMARY JUDGMENT;
(3) DENYING AS MOOT BP'S
MOTION FOR SUMMARY
JUDGMENT AGAINST PACIFIC
EXPOTECH; (4) DENYING BP'S
MOTION TO STRIKE UNTIMELY
FILINGS; AND (5) DENYING AS
MOOT BP'S MOTION TO STRIKE
SCHILLER DEFENDANTS'
OPPOSITIONS**

(ECF Nos. 492, 493, 494, 518, & 519)

Presently before the Court are three motions for summary judgment filed by plaintiff and counter-defendant BP West Coast Products (BP): BP's Motion for Partial Summary Judgment on the PMPA Claims (PMPA MSJ), (ECF No. 492-2); BP's Motion for Partial Summary Judgment Re Indemnity Obligations (Indemnity MSJ), (ECF No. 493-2); and
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BP's Motion for Summary Judgment Against Pacific Expotech and Its Guarantors (Expotech MSJ), (ECF No. 494-1).

In its Expotech MSJ, BP seeks summary judgment against defendant and counter-claimant Pacific Expotech and its Guarantors. These Defendants/Counter-Plaintiffs¹ reached a settlement agreement with BP at a June 8, 2016 Mandatory Settlement Conference with Magistrate Judge Jill L. Burkhardt. (*See* ECF No. 530.) Accordingly, the Court **DENIES AS MOOT** BP's Expotech MSJ.

Although several other Defendants have reached settlement agreements with BP, BP initially directed its PMPA MSJ against 53 Defendants² and its Indemnity MSJ against two groups of Defendants: 53 against whom it seeks to enforce franchise indemnity agreements and 79 against whom it seeks to enforce guaranty agreements.³

¹ The Court refers to the Defendants and Counter-Plaintiffs in this matter generally as "Defendants" for simplicity.

² For purposes of these Motions, the Defendants, operate in three groups: the "Meetra Defendants," who are Meetra, Inc. (Meetra), Medhi Behmard, and Farideh Behmard; the "Schiller Defendants," who are the 116 Defendants represented by attorney David Schiller; and the "Crossroad Defendants," who are Crossroad Petroleum, Inc. (Crossroad) and Ahd Haddad. The PMPA MSJ seeks partial summary judgment against the following Defendants who have not settled:

- Meetra Defendants: Meetra;
- Schiller Defendants: 2 United Oil, LLC; Sharina Alloush; Khaja Ansari; Salman D. Barbat; Big Daddy's Oil 14, Inc.; Denise M. Brown; Cal Coast, Inc.; California Fuel Dispensing, Inc.; Rafael Castillo/ Basel Hassounch; Chase Products, Inc.; Daisie Enterprises, Inc.; Issa T. Demes; Dream Petroleum, Inc.; Ghallab Brothers, Inc.; H&O, Inc.; Hadaf, Inc.; HRMP Corp.; Kulwant Singh Jafal; K&T Park 79, Inc.; Parshotam Kamboj; MDA Fuel, Inc.; Monteagudo Enterprises, Inc.; Gagan Natt; NP Petroleum Corp.; NRRM Corp.; PB, Inc.; Perfect Fuel, Inc.; Rasna, LLC; RP Oil, Inc.; Ruchisys, Inc.; Susan Shen Chin; Shomers Group, LLC; SMO Oil, Inc.; South West Petroleum, LLC; Taftan, Inc.; Brittany Torres; Vasaya Oil Co., Inc.; West Coast Petroleum Services; Toros Zorenkelian; and
- Crossroad Defendants: Crossroad.

The PMPA MSJ was originally directed toward the following Defendants who have now settled: 3 Interstellar Management, Inc.; Awans Enterprises, Inc.; Battir Oil, Inc.; Big Daddy's Oil 15, Inc.; Crestview Consolidated, Inc.; MK Oil Inc./Kaskas Enterprises Inc.; Hamlet Enterprises, Inc.; Rahgozar, Inc.; Shamaah, Inc.; Southland Petroleum, Inc.; Westminster Mini Market, Inc.; United Family, LLC. (*See* ECF No. 534.)

³ The Indemnity MSJ seeks partial summary judgment against the following Defendants who have not settled:

Three opposition briefs were filed in response to BP's PMPA MSJ: Meetra's Opposition, (Meetra PMPA Opp'n, ECF No. 504); the Schiller Defendants' Opposition,⁴ (Schiller Opp'n, ECF Nos. 506 & 507); and Crossroad's Opposition, (Crossroad PMPA Opp'n, ECF No. 509). BP filed a single reply in support of its PMPA MSJ. (PMPA Reply, ECF No. 515.)

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- Meetra Defendants: (for indemnity) Meetra, (for guaranties) Farideh Behmard; Medhi Behmard;
 - Schiller Defendants: (for indemnity) 2 United Oil, LLC; Sharina Alloush; Khaja Ansari; Salman D. Barbat; Big Daddy's Oil 14, Inc.; Denise M. Brown; Cal Coast, Inc.; California Fuel Dispensing, Inc.; Rafael Castillo/ Basel Hassounch; Chase Products, Inc.; Daisie Enterprises, Inc.; Issa T. Demes; Dream Petroleum, Inc.; Ghallab Brothers, Inc.; H&O, Inc.; Hadaf, Inc.; HRMP Corp.; Kulwant Singh Jafal; K&T Park 79, Inc.; Parshotam Kamboj; MDA Fuel, Inc.; Monteagudo Enterprises, Inc.; Gagan Natt; NP Petroleum Corp.; NRRM Corp.; PB, Inc.; Perfect Fuel, Inc.; Rasna, LLC; RP Oil, Inc.; Ruchisys, Inc.; Susan Shen Chin; Shomers Group, LLC; SMO Oil, Inc.; South West Petroleum, LLC; Taftan, Inc.; Brittany Torres; Vasaya Oil Co., Inc.; West Coast Petroleum Services; Toros Zorenkelian; (for guaranties) Sharina Alloush; Habib Alam; Manal Alam; Natalie Alvandi; Fazilath Ansari; Khaja Ansari; Rajesh Arora; Heidi Bahmani; Mohammad Bahmani; Bahman Baktar; Nesrin Barbat; Salman D. Barbat; Paul Baskaron; Younes Dobli Bennani; Rafael Castillo; Issa T. Demes; Ibrahim Ghallab; Maret Golnazarian; Razmik Golnazarian; Basel Hassounch; Kulwant Singh Jafal; Rafwant Jafal; Parshotam Kamboj; Omer Kassa; Bahman Kianmahd; Behzad Kianmahd; Sahar Kirmiz; William Kirmiz; Kalur Kishan; Tarun Maitra; Ani P.K. Mirzaian; Liliana Monteagudo; Senan Naoum; Anit Natt; Gagan Natt; David Parker; Anup Patel; Soma Prasad; Nader Sahih; Payam Sahih; Himanshu Sarvaiya; Sonal Shah; Yogesh Shah; Aly Shakankiry; Ruchira Sharma; Susan Sen Chin; Hamza Shilleh; Vache Simonyan; Kevin Tapia; Tracy Tapia; Seyed Majid Tavabi; Brittany Torres; Jerry Zomorodian; Rebecca Zomorodian; Marie Zorenkelian; Toros Zorenkelian; and
 - Crossroad Defendants: (for indemnity) Crossroad; (for guaranties) Ahd Haddad.

The Indemnity MSJ was originally directed toward the following parties who have now settled: (for guaranties) 3 Interstellar Management, Inc.; Awans Enterprises, Inc.; Battir Oil Inc.; Big Daddy's Oil 15, Inc.; Crestview Consolidated, Inc.; MK Oil Inc./Kaskas Enterprises Inc.; Hamlet Enterprises, Inc.; Rahgozar, Inc.; Shamaah, Inc.; Southland Petroleum, Inc.; Westminster Mini Market, Inc.; United Family, LLC; (for guaranties) Anita Alvandi; Francois Alvandi; Robert Alvandi; Sylvia Haddadin; Mohammad Kaskas; Tahssen Kaskas; Abraham Kurian; Ammar Maaytah; Randa Maaytah; Salah Mazloun; Tigran Pogosyan; Muna Quasqas; Mostafa Rahgozar; Hy E. Sao; Meng E. Sao; Claude Shamaah; Sheela Thomas; Kotsai Wang; Ara Wansikehian. (See ECF No. 534.)

⁴ The Schiller Defendants filed two opposition briefs, one short and one long, although it is not clear why. The briefs were filed in response to both the PMPA MSJ and the Indemnity MSJ, although they only attempt to respond to the PMPA arguments. For lack of better options, the Court construes these opposition briefs as a single long opposition for purposes of each MSJ, and deem these papers to be the operative opposition brief for each group of Schiller Defendants, depending on which MSJ the Court is analyzing.

1 Likewise, three opposition briefs were filed in response to BP's Indemnity MSJ:
 2 the Meetra Defendants' Opposition, (Meetra Indemn. Opp'n, ECF No. 505); the Schiller
 3 Defendants' Opposition, (Schiller Opp'n, ECF Nos. 506 & 507); and the Crossroad
 4 Defendants' Opposition, (Crossroad Indemn. Opp'n, ECF No. 510). In support of its
 5 Indemnity MSJ, BP filed three reply briefs, one responding to each opposition brief.
 6 (Indemn. Reply to Schiller, ECF No. 521; Indemn. Reply to Crossroad, ECF No. 522;
 7 Indemn. Reply to Meetra, ECF No. 523.)

8 The briefing on these MSJs elicited yet another round of motions and briefing. In
 9 response to the Schiller Defendants' briefing, BP filed a Motion to Strike Evidentiary
 10 Objections to Schiller Defendants' Responses to BPWCP's Motions for Summary
 11 Judgment (Motion to Strike Schiller Oppositions), (ECF No. 518-1), and in response to the
 12 Crossroad Defendants' late-filed oppositions, BP filed a Motion to Strike Crossroad
 13 Petroleum, Inc.'s Untimely Responses to BPWCP's Motions for Summary Judgment
 14 (Motion to Strike as Untimely), (ECF No. 519-1). The Crossroad Defendants filed an
 15 opposition to, (Strike Opp'n, ECF No. 528), BP's Motion to Strike as Untimely. The Court
 16 **DENIES** BP's Motion to Strike as Untimely.⁵

17 For the reasons stated below, the Court **GRANTS** BP's PMPA MSJ, **DENIES** BP's
 18 Indemnity MSJ, and **DENIES AS MOOT** BP's Motion to Strike Schiller Oppositions.

19 **BACKGROUND**

20 The Defendants operated gas stations under franchise agreements with BP on sites
 21 they leased from BP, and the guarantor Defendants backed these lease and franchise
 22 agreements. BP did not own the land, but leased the more than 200 gas station sites relevant
 23 to this litigation as a package deal from Thrifty Oil Co. (Thrifty).

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 28 ⁵ The Crossroad Defendants' counsel accidentally filed one day late and these matters are better resolved on the merits.

1 Thrifty leased the land to BP under the Agreement to Lease Retail Gasoline
 2 Facilities (Master Agreement). (Statement of Facts, ¶¶ 1–2, ECF No. 493-3 [*hereinafter*
 3 “Indemnity SOF”]; Wolfe Decl., Ex. A ¶ 4.) The deal involved more than 200 gas station
 4 sites in California. BP and Thrifty executed individual lease agreements for each site,
 5 referred to as “Master Leases,” each of which incorporated the Master Agreement by
 6 reference. (Indemn. SOF ¶ 2.) By organizing hundreds of gas stations under the Master
 7 Agreement, Thrifty achieves “(i) benefits of economies of scale, (ii) ease of management,
 8 and (iii) efficiency of enforcement of master lessee obligations and direct recourse to
 9 remedy any damages suffered by the master lessor.” (Statement of Facts ¶ 5, ECF No.
 10 492-3 [*hereinafter* “PMPA SOF”] (citing Esses Report, Risner Decl. Ex. 139, ECF No.
 11 492-178).)

12 The Master Leases were set to begin expiring in 2012, but gave BP an option to
 13 extend (Extension Options). (PMPA SOF ¶¶ 1–8, 14.) However, BP had to exercise the
 14 Extension Options well in advance, by July 1, 2010, or else they would expire. (PMPA
 15 SOF ¶ 14.) The Extension Options terms provided, “In order to exercise an Extension
 16 Option under any Lease, [BP] must exercise the corresponding Extension Options of all
 17 Leases, except those Leases which by their provisions have terminated prior to the date of
 18 exercise.” (PMPA SOF ¶ 14.)

19 Before entering the franchise agreements, each of the Defendants subject to the
 20 PMPA MSJ acknowledged that the premises they leased were subject to the Master Lease,
 21 (PMPA SOF ¶ 12 (citing Risner Decl. Exs. 1–52, 127, 128, 131, 132, ECF Nos. 492-6–
 22 492-82, 492-157–492-163, 492-166–492-171)), although they were not actually provided
 23 a copy of the contract between BP and Thrifty. The acknowledgements stated, for
 24 example:

- 25 1. The premises are leased to BP West Coast Products LLC by a third party
 26 pursuant to a lease agreement (“Master Lease”).
- 27 2. The Master Lease expires by its express terms on [Applicable Expiration
 28 Date], with an early out date of [if applicable] and may be terminated prior to
 its expiration date.

1 3. The lease pertaining to the premises between the Current franchisee and BP
2 West Coast Products LLC is, in accordance with Section 2 thereof, subject to
3 the terms and conditions of the Master Lease. The lease may be terminated
4 before the above dates if legal grounds exist to do so.

5 (PMPA MSJ ¶ 5; *see also, e.g.*, Risner Decl., Ex. 1, ECF No. 492-6, at 44.)⁶

6 In May 2010, BP notified Thrifty that it would not exercise the Extension Options.
7 (PMPA SOF ¶ 15.) BP had not completely abandoned the leased gas stations, however,
8 and attempted to negotiate a new contract with Thrifty. (*See* PMPA SOF ¶ 17.) These
9 negotiations did not lead to a deal and, in September 2011, BP learned that Thrifty had
10 agreed to lease these gas stations to Tesoro Refining & Marketing Company (Tesoro).
11 (PMPA SOF ¶ 18.) Soon after learning about the Tesoro deal, BP began sending the
12 franchisees “Notices of Nonrenewal/Termination of the Franchise Agreements” (Notices).
13 (PMPA SOF ¶ 19 (citing Risner Decl. Exs. 1–52, 127, 128, 131, 132, ECF Nos. 492-6–
14 492-82, 492-157–492-163, 492-166–492-171).) These Notices informed the franchisees
15 of the date upon which BP would lose the right to grant them possession of the sites, and
16 consequently, when they would have to relinquish control of their gas station premises.
17 (*See* PMPA SOF ¶ 20.) These Notices were sent at least ninety days before each
18 termination or nonrenewal took effect. (PMPA SOF ¶ 22.) In February and March 2012,
19 BP sent the franchisees additional Notices with “amended termination/nonrenewal dates.”
20 (PMPA SOF ¶ 21.)

21 Soon before the underlying Master Leases were due to expire, BP learned that many
22 of the franchisees were preparing to refuse to leave the gas station properties or to sue BP.
23 (Indemn. SOF ¶ 14.) BP preemptively filed lawsuits in March 2012 seeking declaratory
24 and injunctive relief affirming the propriety of the terminations and nonrenewals under the
25 Petroleum Marketing Practices Act (PMPA) and to ensure the franchisees turned over the
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⁶ Pinpoint citations to docketed materials refer to the CM/ECF page number electronically stamped at the top of each page, and do not refer to the page numbering of the original document.

1 properties. (Indemn. SOF ¶ 14.) Several franchisees and guarantors filed their own
 2 lawsuits later that month, suing not only BP, but also Thrifty. (Indemn. SOF ¶ 15.) All of
 3 these actions were consolidated to this Court.

4 The franchisees and Thrifty had no contractual franchise relationship. Although
 5 they operated gas stations on Thrifty's land, Thrifty leased the land to BP, and BP sub-
 6 leased the land to the franchisees. The Defendants in April 2012 moved for a temporary
 7 restraining order and preliminary injunction against BP and Thrifty. (ECF Nos. 17, 24, &
 8 31.) The Court denied these motions on April 19, 2012. (ECF No. 43.) BP and Thrifty
 9 all the while urged the Defendants to dismiss their claims against Thrifty. (Indemn. SOF
 10 ¶¶ 19, 22, 23.) The Defendants eventually relented, dismissing their claims against Thrifty
 11 in May 2012. (ECF Nos. 71, 79.)

12 Both the Master Agreement and Master Leases obligated BP to indemnify Thrifty
 13 for any claims "related to the Gasoline Stations or any Lease Premises" and for Thrifty's
 14 "becoming a party to any action instituted by [BP] against any third party . . . or by any
 15 third party against [BP]" (Indemn. SOF ¶¶ 3–4.)

16 The franchise agreements between BP and the franchisees required the franchisees,
 17 among other things, to maintain the leased premises and equipment in a particular manner,
 18 perform maintenance in some circumstances, return possession of the stations and leased
 19 equipment to BP at the expiration of the franchise agreements, and assign permits and
 20 licenses—such as licenses for alcohol, beer, and wine—to BP at the expiration of the lease.
 21 (Indemn. SOF ¶ 6.) The franchise agreements also included the following indemnity
 22 provision:

23 Franchisee agrees to indemnify, hold harmless and defend BPWCP, its
 24 parents, subsidiaries, officers, directors and employees, from . . . any damages,
 25 claims, costs, expenses, fines or penalties relating to operation(s) . . . on the
 26 Premises, arising out of or in connection with any failure or breach by or on
 27 behalf of Franchisee respecting any provision of this Agreement, or arising
 28 out of Franchisee's use or occupancy of the Premises, Franchisee's operation
 of the business(es) or Franchisee's use, custody or operation of Loaned
 Equipment or any other equipment on the Premises

(Indemn. SOF ¶ 7.) The guarantor Defendants executed Franchise Agreement Guaranties, backing the franchisee Defendants' obligations to BP. (Indemn. SOF ¶ 8–9.)

Thrifty demanded that BP reimburse it for costs paid to defend this action, and BP ultimately paid \$453,643.15. (Indemn. SOF ¶¶ 25–29.) BP attributes \$449,060.50 of those costs to the Defendants who were originally subject to the Indemnity MSJ. (Indemn. SOF ¶ 29.) After the franchisees surrendered possession to BP, and BP in turn surrendered possession to Thrifty, Thrifty identified “defective conditions” at various facilities, including “(a) graffiti on the building structures, fixtures and equipment; (b) holes in building structures that needed repair; and (c) dispenser hoses. Other defective conditions that applied to many of the Premises included those concerning costly landscaping and interior/exterior/canopy lighting issues.” (Indemn. SOF ¶¶ 33–38.) Thrifty also demanded that BP compensate it for failing to timely turn over liquor licenses and for “holdover premiums” related to Meetra’s five gas stations and one other site. (Indemn. SOF ¶¶ 39, 40.) After negotiating these matters for more than a year, BP and Thrifty settled these claims, with BP paying \$2,120,881.10 for costs relevant here. (Indemn. SOF ¶ 43.) BP alleges that \$1,908,668.21 of that is attributable to the Defendants subject to the Indemnity MSJ. (Indemn. SOF ¶ 43.)

Meanwhile, in August 2012, BP announced the sale of its ARCO brand, which included 400 additional ARCO stations throughout Southern California, and nearly all of its Southern California assets, including a refinery located in Carson, California, to Tesoro, the entity who leased the premises after BP’s Master Leases expired. (PMPA SOF ¶ 23.) The BP-Tesoro deal closed on June 1, 2013. (PMPA SOF ¶¶ 24, 26.)

LEGAL STANDARD

Under Federal Rule of Civil Procedure 56(a), a party may move for summary judgment as to a claim or defense or part of a claim or defense. Summary judgment is appropriate where the Court is satisfied that there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Material facts are those that may affect

1 the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A
2 genuine dispute of material fact exists only if “the evidence is such that a reasonable jury
3 could return a verdict for the nonmoving party.” *Id.* When the Court considers the
4 evidence presented by the parties, “[t]he evidence of the non-movant is to be believed, and
5 all justifiable inferences are to be drawn in his favor.” *Id.* at 255.

6 The initial burden of establishing the absence of a genuine issue of material fact falls
7 on the moving party. *Celotex*, 477 U.S. at 323. The moving party may meet this burden
8 by identifying the “portions of ‘the pleadings, depositions, answers to interrogatories, and
9 admissions on file, together with the affidavits, if any,’” that show an absence of dispute
10 regarding a material fact. *Id.* When a party seeks summary judgment as to an element for
11 which it bears the burden of proof, “it must come forward with evidence which would
12 entitle it to a directed verdict if the evidence went uncontroverted at trial.” *See C.A.R.*
13 *Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (quoting
14 *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992)).

15 Once the moving party satisfies this initial burden, the nonmoving party must
16 identify specific facts showing that there is a genuine dispute for trial. *Celotex*, 477 U.S.
17 at 324. This requires “more than simply show[ing] that there is some metaphysical doubt
18 as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
19 586 (1986). Rather, to survive summary judgment, the nonmoving party must “by her own
20 affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’
21 designate ‘specific facts’” that would allow a reasonable fact finder to return a verdict for
22 the non-moving party. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 248. The non-
23 moving party cannot oppose a properly supported summary judgment motion by “rest[ing]
24 on mere allegations or denials of his pleadings.” *Anderson*, 477 U.S. at 256.

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ANALYSIS

I. The PMPA MSJ

In its PMPA MSJ, BP seeks summary judgment:

1. On its First Claim for Relief under the Petroleum Marketing Practices Act (the PMPA), 15 U.S.C. § 2801 *et seq.*, in which BP seeks a declaratory judgment that it did not violate the PMPA, (BP Fifth Am. Compl. ¶¶ 137–140, ECF No. 296-3);

2. Against Crossroad’s counterclaims, in particular its First, Second, and Third Causes of Action, which allege that BP violated the PMPA, 15 U.S.C. § 2801, *et seq.*, as set forth in Crossroad’s Second Amended Counterclaim for Injunctive Relief and Damages, (Crossroad Second Am. Countercl. ¶¶ 35–72, ECF No. 206);

3. Against Meetra’s counterclaims, in particular its First and Second Causes of Action for violations of the PMPA and Declaratory Relief, respectively, (Meetra Inc.’s Third Am. Countercl. ¶¶ 40–49, ECF No. 263); and

4. Against the Schiller Defendants’ counterclaims, in particular their PMPA and Declaratory Judgment Causes of Action, (Fourth Am. Answer and Countercl. ¶¶ 217–220, ECF No. 257).

One purpose of the PMPA is to protect gas station franchisees in their dealings with franchisors, who are typically “large oil corporations and gasoline distributors, and to remedy the disparity in bargaining power between parties to gasoline franchise contracts.” *BP W. Coast Prods. LLC v. May*, 447 F.3d 658, 662 (9th Cir. 2006) (quoting *DuFresne’s Auto Serv., Inc. v. Shell Oil Co.*, 992 F.2d 920, 925 (9th Cir.1993)). At the same time, however, the PMPA is designed to provide “adequate flexibility so that franchisors may initiate changes in their marketing activities to respond to changing market conditions and consumer preferences.” *Unocal Corp. v. Kaabipour*, 177 F.3d 755, 762 (9th Cir. 1999) (citing S. Rep. No. 95-731, at 18–19 (1978), *reprinted in* 1978 U.S.C.C.A.N. 873, 877). The PMPA achieves these goals by establishing minimum “standards governing the termination and non-renewal of franchise relationships for the sale of motor fuel by the

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franchisor or supplier.” *May*, 447 F.3d at 662 (quoting *Fresher v. Shell Oil Co.*, 846 F.2d 45, 46 (9th Cir. 1988) (per curiam)).

These minimum standards allow franchisors to terminate or decline to renew an existing franchise relationship only if one of the conditions listed in 15 U.S.C. § 2802(b) occurs, and even then the termination must follow the notification requirements outlined in 15 U.S.C. § 2804. *May*, 447 F.3d at 662–63. One such condition is the “occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable” 15 U.S.C. § 2802(b)(2)(C). The statute defines twelve such events in § 2802(c), including “loss of the franchisor’s right to grant possession of the leased marketing premises through expiration of an underlying lease” 15 U.S.C. § 2802(c)(4). Thus, one valid ground for a franchisor’s termination or nonrenewal of a franchise agreement is the loss of the right to grant possession to the franchisee. *See id.*

If a franchisor terminates a franchise based on loss of its right to grant possession, it must have abided by several requirements. First, the franchisee must have received notice in writing:

prior to the commencement of the term of the then existing franchise (i) of the duration of the underlying lease; and (ii) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

15 U.S.C. § 2802(c)(4)(A). Second, the franchisor generally must notify the franchisee of the termination or nonrenewal in writing at least ninety days before it takes effect. 15 U.S.C. § 2804(a). Third, the franchisor must, with a few caveats, offer during the ninety-day notice period “to assign to the franchisee any option to extend the underlying lease or option to purchase the marketing premises that is held by the franchisor.” 15 U.S.C. § 2802(c)(4)(B).

BP contends that the evidence shows (1) that BP lost its right to grant possession of the premises it leased to Meetra, the Schiller Defendants, and Crossroad; (2) that each of those Defendants received the statutorily required notice before the franchises commenced;

(3) that BP notified these Defendants at least ninety days before the termination/nonrenewal took effect; and (4) that it had no renewal option that it could assign to these Defendants. Importantly for purposes of this summary judgment motion, BP contends that the Defendants cannot identify any contradictory evidence adequate to give rise to a genuine dispute of material fact with respect to any of these conditions.

The Defendants do not argue that BP did not actually lose the right to grant possession of the various sites or that BP did not provide notice that the underlying leases would expire at least ninety days before they did. Rather, Meetra argues that: (1) BP had lease renewal options that it was required to offer to assign; (2) the PMPA required BP to notify the Defendants within 120 days after it learned the underlying lease would expire, which BP did not do; and (3) there is a dispute over the timing by which BP provided notice to Meetra of the underlying Master Lease. (Meetra PMPA Opp’n at 10–17.) Crossroad raises similar arguments with respect to BP’s obligation to offer to assign renewal options and provide notice 120 days after it knew the underlying lease would lapse. (Crossroad PMPA Opp’n at 3–9.) The Schiller Defendants argue that BP engaged in a regional market withdrawal, and was therefore required to follow certain other procedures under the PMPA. (*See, e.g.*, Schiller Opp’n at 5–6, 11, 40.)

A. 120 Day Notice

The PMPA did not require BP to notify the franchisees within 120 days of when it knew it would lose the right to grant possession of the gas station sites.

For most events of the events that allow termination or nonrenewal, the franchisor must give the franchisee notice of termination or nonrenewal within 120 days of when that event occurs. *See* 15 U.S.C. § 2802(b)(2)(C)(i). The PMPA lists twelve different “events” that may justify termination or nonrenewal. *See* 15 U.S.C. § 2802(c)(1)–(12); *Veracka*, 655 F.2d at 449. Of those twelve, “expiration of the underlying lease (and no other) comes accompanied with its own special notice requirement.” *Veracka*, 655 F.2d at 449. Then-Circuit Judge Breyer writing for the First Circuit concluded that, when the basis for termination or nonrenewal of a franchise relationship is the loss of the franchisor’s right to

1 grant possession under § 2802(c)(4), the franchisor is only required to follow that section’s
 2 specific notice provision. *See id.* at 449–50; 15 U.S.C. § 2802(b)(2)(C)(i). That is, the
 3 franchisor must have provided the franchisee with adequate prior notice of the terms of the
 4 underlying lease—but is not required to give notice within 120 days of acquiring “actual
 5 or constructive knowledge” of the relevant “event.” *See Veracka*, 655 F.2d at 449–50.

6 Although they argue that *Veracka* contradicts the text of the PMPA, (Meetra PMPA
 7 Opp’n at 16), Defendants cite no case that breaks with the holding that the 120 day notice
 8 period does not apply to the loss of the right to grant possession under § 2802(c)(4). On
 9 the other hand, BP cites to five district court decisions following this rule. (*See* PMPA
 10 Reply at 8 (citing *Patel v. Sun Co., Inc.*, 948 F. Supp. 465, 472 n.4 (E.D. Pa. 1996); *Atkins*
 11 *v. Chevron USA Inc.*, 672 F. Supp. 1373, 1376 (W.D. Wash. 1987); *Zarcone v. Amerada*
 12 *Hess Corp.*, 661 F. Supp. 615, 617 (E.D.N.Y. 1987); *Graeber v. Mobil Oil Corp.*, 614 F.
 13 Supp. 268, 272–73 (D.N.J. 1985); *Gaspar v. Chevron Oil Co.*, 490 F. Supp. 971, 975
 14 (D.N.J. 1980)).) While it is true that most of those authorities predate the 1994
 15 amendments to the PMPA that added the obligation to assign extension options, the text
 16 governing notice did not change, and at least one district court has explicitly followed the
 17 rule announced in *Veracka* since those amendments. *See Patel*, 948 F. Supp. at 472 n.4.
 18 The Defendants have provided no persuasive reason for the Court to break with the
 19 reasoning of the courts who have directly addressed this issue. Thus, BP was not obligated
 20 to provide notice to Defendants within 120 days of realizing its lease with Thrifty would
 21 expire.

22 Crossroad does not take issue with the rule in *Veracka*, but instead points to an
 23 alternative “event”—the loss of the use of trademarks—that led to the
 24 termination/nonrenewal, arguing that this event obligated BP to provide notice within 120
 25 days. (Crossroad PMPA Opp’n at 9.) Although it is true that termination or nonrenewal
 26 based on the “loss of franchisor’s right to grant the right to use the trademark which is the
 27 subject of the franchise” is an event that would require a franchisor to give notice within
 28 120 days, *see* 15 U.S.C. § 2802(b)(2)(C)(i) & (c)(6), a “franchisor needs to provide only

one valid reason for termination under the PMPA,” *PDV Midw. Ref., L.L.C. v. Armada Oil & Gas Co.*, 305 F.3d 498, 508 (6th Cir. 2002). “[N]otice of a legitimate ground for termination is not made ineffective by defective notice for additional grounds for termination.” *Id.* (citing *Stuart v. Exxon Co., U.S.A.*, 624 F. Supp. 648, 653–54 (N.D. Tex. 1985)). Accordingly, because notice was proper with respect to the expiration of BP’s lease, it does not matter if notice was improper with respect to BP’s anticipated loss of the right to grant use of a trademark.

B. Notice of the Underlying Lease

There is no genuine dispute that BP gave each defendant subject to the PMPA MSJ adequate notice of the underlying Master Leases.

For termination based on a franchisor’s loss of right to grant possession to be reasonable, the franchisor must have given the franchisee notice “in writing, prior to the commencement of the term of the then existing franchise (i) of the duration of the underlying lease; and (ii) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal).” 15 U.S.C. § 2802(c)(4)(A).

Meetra contends there is a dispute of fact over whether BP complied with this requirement. (Meetra PMPA Opp’n at 13–15.) More specifically, Meetra states that the “franchise agreements initially did not mention the expiration of any underlying third party leases,” (*id.* at 13 (citing Risner Decl., Ex. 131 pt. 1, ECF No. 492-166, at 9–10), and that Meetra was never provided the Master Agreement between BP and Thrifty, (*id.*). Focusing in on one site in particular, 6800 Lankershim Boulevard, also known as Facility No. 9513, Meetra points out that the franchise agreement was dated March 11, 2009, and the Acknowledgement of Master Lease is dated several months later, November 12, 2009. (*Id.* (citing Facility No. 9513 Acknowledgement Form, Risner Decl., Ex. 131 pt. 4, ECF No. 492-169, 88; Facility No. 9513 Franchise Agreement, Risner Decl. Ex. 131 pt. 1, ECF No. 492-166, at 9–10, 89).) Meetra also suggests that BP’s execution of “Amendments” to the franchise agreements on the same day as notices of non-renewal were delivered, September

27, 2011, was basically an attempt to correct inadequate notice of BP's underlying ground lease with Thrifty. (*See id.* at 14.)

First, there is a simple explanation for why Meetra's Acknowledgement Form for Facility No. 9513 is dated after the franchise agreement: Meetra was not the original franchisee. (*See* PMPA Reply at 9–10.) The Facility No. 9513 agreement was effective on March 11, 2009 between BP and Behmard & Associate, Inc. (Facility No. 9513 Franchise Agreement, Risner Decl. Ex. 131 pt. 1, ECF No. 492-166, at 9.) Behmard & Associate, Inc., assigned the franchise to Meetra Inc. on December 10, 2009.⁷ (Risner Decl., Ex. 131 pt. 1, ECF No. 492-166, at 62–63.) Thus, the evidence shows that the business entity Meetra, which is the only Meetra Defendant subject to the PMPA MSJ, executed the Acknowledgement Form nearly a month before it assumed and therefore entered into the franchise agreement for that site.

Second, Meetra cites no authority, and the Court is aware of none, stating that a franchisor is obligated to provide the franchisee a copy of the underlying lease. Rather, the statute requires the franchisor to inform the franchisee about certain terms in the lease that are relevant to the continuance of the franchise agreement. *See* 15 U.S.C. § 2802(c)(4)(A). The Acknowledgement of Master Lease forms summarize those terms. BP was not, therefore, legally obligated to provide the Defendants with a copy of the underlying lease.

Third, as BP clarifies in its Reply, the “Amendments” Meetra refers to simply “updated the Franchise Agreement termination dates to correspond to the expiration date of each Master Lease.” (Reply at 9 n.9 (citing Risner Decl., Ex. 131 pt. 1, ECF No. 492-166, at 60–61).) In light of the signed forms acknowledging the existence and relevant

⁷ Mehdi Behmard, one of the so-called “Meetra Defendants,” signed on behalf of both Behmard & Associate, Inc. and Meetra Inc. In any event, the business entity Behmard & Associate is not a party to this litigation. The Facility No. 9513 Acknowledgement Form Meetra cites was executed by Mehdi Behmard on behalf of Meetra, rather than Behmard & Associate, Inc. (*See* Risner Decl., Ex. 131 pt. 4, ECF No. 492-169, at 88.)

1 terms of the Master Lease, this amendment does not give rise to a genuine dispute of fact
2 over whether BP notified the franchisees of the underlying ground lease.

3 In sum, there is no genuine dispute of material fact as to whether BP provided notice
4 of the underlying Master Leases as required by 15 U.S.C. § 2802(c)(4)(A). The
5 uncontroverted evidence shows that it did.

6 **C. *Renewal Options***

7 There is also no disagreement over whether BP's Extension Options were still
8 exercisable during the ninety day notice period preceding the expiration of the underlying
9 leases. They were not. Because BP no longer had the options itself, it had no obligation
10 under the PMPA to offer to assign them to the franchisees.

11 The PMPA requires franchisors to offer extension options to franchisees that they
12 possess during the ninety-day notice period. *See* 15 U.S.C. § 2802(c)(4)(B). In this case,
13 the renewal options had long since expired when BP gave the Defendants the ninety-day
14 notice. BP declined to exercise its options by July 1, 2010, so they lapsed when that date
15 passed.

16 The Defendants do not argue that BP possessed the Extension Options during this
17 time, but instead combine their 120-day notice argument with the obligation to offer to
18 assign options under § 2802(c), suggesting that because BP was required to give notice
19 within 120 days of learning it would lose the right to grant possession, it also had to offer
20 to assign options it had during that time period. As the Court already noted, BP was not
21 obligated to give the within-120-days notice, so Defendants' arguments fail to the extent
22 they depend on that notice obligation. In any case, the text of § 2802(c)(4)(B) refers to the
23 "90-day period after notification was given pursuant to section 2804," not the within-120-
24 days notification period, so Defendants' arguments also fail based on the plain language of
25 the statute.

26 The Defendants further suggest that the circumstances of this case make BP's
27 termination and nonrenewal of these franchises unreasonable. In particular, Meetra
28 suggests that BP's decision not to exercise the Extension Options, to allow the Extension

Options to lapse, and only later to give the franchisees notice of termination and nonrenewal is an “end run” around the PMPA. (*See* Meetra PMPA Opp’n at 12.) That is, BP used its “privileged position in the market” to ensure that it would not have to offer to assign these options. (*See id.* at 12.) Crossroad also suggests that the existence of these options and BP’s failure to offer to assign them makes the termination and nonrenewal unreasonable. (Crossroad PMPA Opp’n at 7.)

If a franchisor terminates under 15 U.S.C. § 2802(b)(2)(C) based on the occurrence of one of the events listed in 15 U.S.C. § 2802(c), termination is reasonable. *See Atl. Richfield Co. v. Guerami*, 820 F.2d 280, 283 (9th Cir. 1987) (rejecting the argument that the court must inquire into whether the occurrence of an event listed in § 2802(c) undermined the franchise relationship enough to justify termination/nonrenewal); *see also Joseph v. Sasafrasnet, LLC*, 689 F.3d 683, 690 (7th Cir. 2012) (“Every other circuit court that has addressed the matter has held that the occurrence of an event listed in § 2802(c) provides a franchisor with a per se reasonable basis for terminating a franchise.”) (citing *Hinkleman v. Shell Oil Co.*, 962 F.2d 372, 377 (4th Cir. 1992) (per curiam); *Desfosses v. Wallace Energy, Inc.*, 836 F.2d 22, 26 (1st Cir. 1987); *Clinkscales v. Chevron U.S.A., Inc.*, 831 F.2d 1565, 1573 (11th Cir. 1987); *Atl. Richfield Co.*, 820 F.2d at 283; *Russo v. Texaco, Inc.*, 808 F.2d 221, 225 (2d Cir. 1986); *Lugar v. Texaco, Inc.*, 755 F.2d 53, 57–58 & n.3 (3d Cir. 1985)).

Courts will, however, take a close look at the factual predicates underlying one of the events listed in § 2802(c) before concluding that they are established. *See, e.g., Mustang Mktg., Inc. v. Chevron Prods. Co.*, 406 F.3d 600 (9th Cir. 2005). For example, in *Mustang Marketing*, the Ninth Circuit concluded that the franchisor possessed an option—although the franchisor argued it did not—and remanded for the trial court to determine whether the franchisor had in fact offered this option. *Id.* at 607–08. With respect to whether the franchisor properly evicted the franchisee based on its purported loss of the right to grant possession, the Ninth Circuit indicated that courts should scrutinize “the franchisor’s subjective intent, its continuing control over the marketing premises, and its

1 actual or eventual right to continued possession.” *Id.* at 608 (citing *Hifai v. Shell Oil Co.*,
 2 704 F.2d 1425, 1429 (9th Cir. 1983); *Veracka*, 655 F.2d at 448). In other words, courts
 3 should be wary of attempts by franchisors to “end a franchise relationship with one operator
 4 while retaining control of the premises.” *Id.* at 609 (citing *Hifai*, 704 F.2d at 1429).
 5 Notably, in *Mustang Marketing*, the Ninth Circuit reversed the district court’s grant of
 6 summary judgment because the franchisor’s “actions point[ed] to the fact that [it] never
 7 intended to leave the premises.” *Id.*

8 By contrast, in this case, there is no factual question of whether BP possessed
 9 extension options during the ninety-day notice period and BP did not retain control over or
 10 possession of these gas station sites after the underlying leases expired. As for Meetra’s
 11 assertion that BP positioned itself so that it could not assign these options, Meetra has not
 12 identified any evidence from which a reasonable fact finder could reach this conclusion
 13 and has not cited any authority explaining the legal significance of structuring a contract
 14 to avoid the PMPA’s requirement to assign options.

15 Accordingly, the Court concludes that undisputed material facts show that BP
 16 complied with its obligations under the PMPA with regard to its Extension Options and §
 17 2802(c)(4) more generally.

18 **D. *The Schiller Defendants’ Market Withdrawal Theory and BP’s***
 19 ***Motion to Strike***

20 Because BP has established that it had a valid reason to terminate these franchises
 21 under 15 U.S.C. § 2802, the Court does not need to consider the merits of the Schiller
 22 Defendants’ argument that BP was engaged in a market withdrawal and failed to comply
 23 with the procedures for market withdrawal. *See PDV Midw. Ref., L.L.C.*, 305 F.3d at 508
 24 (“A franchisor needs to provide only one valid reason for termination under the PMPA.”).
 25 The Court therefore rejects the Schiller Defendants’ argument on that basis.

26 BP moves the Court to strike the Schiller Defendants’ Opposition for exceeding the
 27 page limitation and to strike references to record evidence for lack of specificity. (Mot. to
 28 Strike Schiller Opp’ns, ECF No. 518-1.)

1 Rule 56(c)(1)(A) directs parties in summary judgment motion practice to cite “to
 2 particular parts of materials in the record.” “[W]hen a party relies on deposition testimony
 3 in a summary judgment motion without citing to page and line numbers, the trial court may
 4 in its discretion exclude the evidence.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775
 5 (9th Cir. 2002); *see also Huey v. UPS, Inc.*, 165 F.3d 1084, 1085 (7th Cir. 1999) (“[J]udges
 6 need not paw over the files without assistance from the parties.”); *Nissho-Iwai Am. Corp.*
 7 *v. Kline*, 845 F.2d 1300, 1307 (5th Cir.1988) (noting that parties must designate specific
 8 facts and their location in the record when relying on deposition testimony).

9 The Schiller Defendants attached 236 pages of deposition testimony from William
 10 J. Fry, (*see* Schiller Defs.’ Exs. A1–A3, ECF Nos. 506-1–506-3), and 128 pages of
 11 deposition testimony from Don Strenk, (*see* Schiller Defs.’ Exs. B1–B4, ECF Nos. 506-5–
 12 506-8). The Schiller Defendants submitted 44 pages of briefing, not including tables of
 13 contents. (*See* ECF Nos. 506 & 507.) With a few exceptions, where this briefing cites
 14 evidence in the record, it is inexcusably vague. For example, on page 16 of the second of
 15 the Schiller Defendants’ two Opposition briefs, the Schiller Defendants assert that BP
 16 allowed the leases to expire because it “had decided to withdraw from the retail gasoline
 17 market in [S]outhern California” and that BP never offered to assign to the franchisees its
 18 extension option. (Schiller Opp’n, ECF No. 507, at 16.) To support this argument with
 19 evidence, the Schiller Defendants cite the “Declaration of Scherer with attachments, and
 20 Deposition excerpts of Fry and Strenk.” *Id.* In other words, to support these factual
 21 premises, the Schiller Defendants cite generally to more than 350 pages⁸ of deposition
 22 testimony and “hundreds of pages of declarations and attachments,” leaving the Court—
 23 and BP—“to guess which evidence supposedly supports the purported fact.” (*See* Mot. to
 24 Strike Schiller Opp’ns, ECF No. 518-1, at 7–8.)

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 28 ⁸ Documents attached to the Opposition purport to identify the relevant pages, but even those documents generally direct the Court to more than eighty pages of testimony.

1 In a rare demonstration of specificity, the Schiller Defendants cite the “excerpt of
2 deposition transcript of Brad Linskog, Divestment Manger in BP’s real estate department,
3 depo pp. 1, 5, 23, 25, 28–30, 89–90, 169–170.” (Schiller Opp’n, ECF No. 507, at 11.) As
4 it turns out, that is every page of Mr. Linskog’s deposition testimony submitted in support
5 of certain Schiller Defendants’ Answer and Counterclaim, (ECF No. 18).

6 While this lack of specificity would warrant granting BP’s motion to strike, it does
7 not affect the resolution of BP’s PMPA MSJ, and is therefore moot. Accordingly, the
8 Court **DENIES AS MOOT** BP’s Motion to Strike Schiller Oppositions, (ECF No. 518).

9 **E. Conclusion**

10 There is no genuine dispute that (1) BP lost its right to grant possession of the
11 premises it leased to Meetra, the Schiller Defendants, and Crossroad; (2) each of those
12 Defendants received the statutorily required notice before the franchises commenced; (3)
13 BP notified these Defendants at least ninety days before the termination and nonrenewal
14 took effect; and (4) during the relevant time period, BP had no renewal options it could
15 offer to assign to these Defendants. Accordingly, the Court **GRANTS** BP’s PMPA MSJ
16 as to the remaining active Defendants.

17 **II. The Indemnity MSJ**

18 In its Indemnity MSJ, BP moves for summary judgment on its Fourth Claim for
19 Breach of Defendants’ Indemnity Obligations and its Fifth Claim for Breach of the
20 Franchise Agreement Guaranties. (Fifth Am. Compl. ¶¶ 155–162, ECF No. 296-3). BP
21 contends that franchisees and guarantors are liable for damages related to the various
22 indemnity agreements and guaranties between BP and each defendant identified in
23 Appendix A to the Indemnity MSJ. (*See* Indemnity MSJ at 5; Indemnity MSJ, App’x A,
24 ECF No. 493-1.) BP paid Thrifty Oil Co. more than \$2.3 million pursuant to their lease
25 and indemnity agreements. BP now seeks to recover \$2,357,728.71 from the franchisee
26 and guarantor Defendants against whom it brought this MSJ, alleging that uncontroverted
27 evidence establishes that these damages are attributable to their breach of the indemnity
28 and guaranty agreements. (*See* Indemn. MSJ at 5.)

1 The claimed damages come in two varieties. First, BP seeks to recover \$449,060.50
 2 that it says it was required to pay Thrifty related to the Defendants' inappropriately
 3 involving Thrifty in this lawsuit. (Indemn. MSJ at 5, 10.) Second, BP seeks to recover
 4 \$1,908,668.21 related to "site condition costs, holdover rent, and ABC license delays
 5 directly attributable to Defendants." (*Id.* at 11–12.)

6 A breach of indemnity agreement claim is essentially the same as a breach of
 7 contract claim. *See* Cal. Civ. Code § 2772 ("Indemnity is a contract by which one engages
 8 to save another from a legal consequence of the conduct of one of the parties, or of some
 9 other person."). The plaintiff must prove: (1) the existence of an indemnity agreement; (2)
 10 plaintiff's performance; (3) "the facts showing a loss within the meaning of the parties'
 11 indemnification agreement"; and (4) resulting damage. *See Four Star Elec., Inc. v. F & H*
 12 *Constr.*, 7 Cal. App. 4th 1375, 1379 (1991); *Travelers Cas. & Sur. Co. of Am. v. Highland*
 13 *P'ship, Inc.*, No. 10CV2503 AJB DHB, 2012 WL 5928139, at *4 (S.D. Cal. Nov. 26, 2012)
 14 (citing *First Nat'l Ins. Co. of Am. v. Hunt*, 2011 WL 2173765 *3 (E.D. Cal. 2011)).

15 The indemnity provisions in the franchise agreements provide:

16 Without limitation of any other right or any remedy of BPWCP, whether
 17 arising under this Agreement or otherwise, Franchisee agrees to indemnify,
 18 hold harmless and defend BPWCP, its parents, subsidiaries, officers, directors
 19 and employees, from . . . any damages, claims, costs, expenses, fines or
 20 penalties relating to operation(s) . . . on the Premises, arising out of or in
 21 connection with any failure or breach by or on behalf of Franchisee respecting
 22 any provision of this Agreement, or arising out of Franchisee's use or
 occupancy of the Premises, Franchisee's operation of the business(es) or
 Franchisee's use, custody or operation of Loaned Equipment or any other
 equipment on the Premises

23 (Indemn. MSJ SOF ¶ 6.)

24 Where contracts use the "arising from" language, as the relevant franchise
 25 agreements do, "liability will attach if the indemnitor's performance under the contract is
 26 'causally related in some manner to the injury for which indemnity is claimed.'" *S. Cal.*
 27 *Gas Co. v. Syntellect, Inc.*, No. 08-CV-941-BEN MDD, 2014 WL 334462, at *2 (S.D. Cal.
 28

Jan. 28, 2014) (citing *St. Paul Fire & Marine Ins. Co. v. Am. Dynasty Surplus Lines Ins. Co.*, 101 Cal. App. 4th 1038, 1050 (2002)), *aff'd*, 593 F. App'x 732 (9th Cir. 2015).

A. Thrifty Legal Defense Costs

BP has not established that the indemnity terms in the franchise agreements encompass Thrifty's legal costs.

BP argues the Defendants are liable for the Thrifty defense costs because the indemnity agreements use the language "arising from," and the Thrifty legal costs are causally related⁹ to the franchisees' "use or occupancy" of the leased premises. The Court is not convinced, however, that as a matter of law the contract term "arising under" is as broad as BP suggests. The fundamental problem is that there is nothing about the indemnity term BP relies upon or the construction BP proposes that would limit its ability to recover costs related to this litigation in any reasonable manner. For example, nothing in the indemnity term would allow BP to recover Thrifty's litigation costs and attorneys' fees where there is no "factual or legal basis to hold Thrifty accountable," but would prohibit BP from recovering Thrifty's fees if the franchisees' claims were meritorious. Similarly, this construction would entitle BP to recover its own costs and attorneys' fees even if the franchisees proved BP violated the PMPA. It seems unlikely the parties intended for the franchisees to finance all PMPA-related litigation regardless of who prevailed.

The primary case upon which BP relies, *Southern California Gas Co.*, involved an indemnity term that much more clearly contemplated the type of reimbursement sought in that suit. *See* 2014 WL 334462, at *1. The plaintiff sought indemnification for costs associated with a patent infringement lawsuit and settlement. *Id.* at *1–2. The term at issue specifically stated that the defendant would indemnify the plaintiff for costs "arising

⁹ Although BP's brief repeatedly cites the standard as "casually related," (*see, e.g.*, PMPA MSJ at 14, 18; Reply to Crossroad at 4), the primary case upon which it relies, *Southern California Gas Co.*, states that standard for this language as "causally related," *see* 2014 WL 334462, at *2. The Court therefore assumes that is the construction BP urges.

1 from (1) actual or alleged infringement . . . of any patent . . . in connection with” the product
2 defendant sold to the plaintiff. *See id.* at *1.

3 The causal relationship in this case is more attenuated. In moving for summary
4 judgment, BP has the burden of presenting evidence that, if uncontroverted at trial, would
5 entitle it to a directed verdict. The mere existence and language of this term is not evidence
6 that would entitle BP to a directed verdict, and BP has identified no evidence suggesting
7 the parties intended this term to have the broad application BP now asserts.

8 Additionally, the public policy behind the PMPA suggests the Court should hesitate
9 to read the indemnity term as BP suggests. Courts may deem terms that contravene the
10 statutory rights granted by the PMPA invalid. *See Graham Oil Co. v. ARCO Prods. Co.*,
11 43 F.3d 1244, 1248 (9th Cir. 1994) (holding that an arbitration clause limiting the
12 franchisee’s ability to recover exemplary damages and reasonable attorneys’ fees and
13 shortened the time in which the franchisee could sue to less than the statute of limitations
14 contravened the PMPA and was therefore invalid) *as amended* (Mar. 13, 1995). Meetra
15 argues that because the PMPA only allows a franchisor to recover fees if the court finds
16 that the suit was frivolous, the construction of the indemnity term BP proposes would make
17 the term invalid. (Meetra Indemn. Opp’n at 8 (citing 15 U.S.C. § 2805(d)(3)).) The fact
18 that the contractual construction BP urges would make the Defendants liable for BP’s own
19 attorneys’ fees but does not require a finding of frivolousness suggests the parties did not
20 intend for the term to make franchisees liable for any attorneys’ fees that would not have
21 been incurred but for the franchisees’ use or occupancy of the premises.

22 BP points out that it is not seeking to recover fees for this litigation and that it is only
23 seeking to recover fees because Thrifty was improperly included. To have a contractual
24 right to recover these fees, there would need to be a contractual term providing such a right.
25 The indemnity provision BP cites says nothing about improperly including Defendants,
26 and BP offers no construction of this term that would encompass attorneys’ fees incurred

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1 by Thrifty because it was “improperly” sued, but that would not also encompass BP’s and
 2 Thrifty’s attorneys’ fees even in a meritorious suit by the franchisees.

3 Accordingly, the Court **DENIES** BP’s Indemnity MSJ with respect to Thrifty’s
 4 attorneys’ fees.

5 **B. Site Condition and Holdover Costs**

6 BP has not met its burden of identifying evidence entitling it to judgment as a matter
 7 of law with respect to the site condition and holdover costs related to BP’s settlement with
 8 Thrifty.

9 BP argues that the Defendants against whom it brought the Indemnity MSJ are liable
 10 for damages BP incurred related to its Master Leases with Thrifty. After the franchisees
 11 vacated the premises, Thrifty sought reimbursement from BP for holdover rent, the
 12 franchisees’ failure to timely transfer liquor licenses, and the costs it or its new lessee paid
 13 related to “graffiti on the building structures, fixtures and equipment, holes in building
 14 structures, damaged dispenser hoses, costly landscaping . . . , and broken
 15 interior/exterior/canopy lighting.” (Indemn. MSJ at 15–16 (citing SOF ¶¶ 36–38).) BP
 16 paid \$2,120,881.10 to settle these claims with Thrifty, of which BP contends that these
 17 Defendants are liable for \$1,908,668.21.

18 An indemnitee must show that it was liable for the amount for which it seeks
 19 indemnification, the liability is covered by the indemnity contract, and the extent of liability
 20 for which it seeks indemnification is appropriate. *Peter Culley & Assoc. v. Super. Court*,
 21 10 Cal. App. 4th 1484, 1497 (1992), *as modified on denial of reh’g* (Dec. 16, 1992). An
 22 indemnitor is liable to the indemnitee for good faith settlements within the scope of an
 23 indemnity agreement. *See Lincoln Gen. Ins. Co. v. Access Claims Adm’rs, Inc.*, 596 F.
 24 Supp. 2d 1351, 1374 (E.D. Cal. 2009) (“California has long applied the rule that when there
 25 is an agreement to indemnify for liability, the party seeking indemnification need not wait
 26 for judgment against it, but may be indemnified for payments made in satisfaction of a
 27 settlement.”); *see also Mabie & Mintz v. B & E Installers*, 25 Cal. App. 3d 491 (1972).

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1 A settlement is presumptive evidence that the indemnitee was liable, but this
2 presumption “may be overcome by proof from the indemnitor that the settlement was
3 unreasonable (e.g., unreasonable in amount, entered collusively or in bad faith, or entered
4 by an indemnitee not reasonable in the belief that he or she had an interest to protect).”
5 *Peter Culley & Assoc.*, 10 Cal. App. 4th at 1497. When the settling indemnitee
6 unreasonably pays too much, “thereby acting as a volunteer,” the settlement may be
7 deemed unreasonable. *See Clayton Ford v. Ford Motor Co.*, 104 Cal. App. 4th 46, 58
8 (2002).

9 Understandably, given the sheer number of Defendants in this action and subject to
10 the Indemnity MSJ, BP’s motion works in broad generalities, making it difficult to examine
11 on a defendant-by-defendant basis whether BP was liable for each portion of the settlement
12 amount it paid to Thrifty and whether those losses were covered by the indemnity
13 agreements between BP and the franchisors in the first place.

14 The first of those difficulties is not fatal to BP’s Indemnity MSJ. Following
15 California law, the Court begins with the presumption that BP was liable based on the fact
16 that it settled. The burden therefore lies with the Defendants to identify evidence showing
17 the settlement was unreasonable, *see Peter Culley & Assoc.*, 10 Cal. App. 4th at 1497,
18 which the Defendants have not done. Importantly, however, this presumption applies to
19 the question of whether the *indemnitee* was liable *to a third party* for the amount for which
20 it seeks indemnification. *See id.* This presumption does not, therefore, save BP with
21 respect to the second difficulty identified—whether each loss was covered by the
22 agreement between BP and the franchisees.

23 BP attempts to demonstrate the liability of the dozens of Defendants subject to the
24 Indemnity MSJ by using examples of things that may support findings that the losses were
25 covered by the indemnity agreements. (*See Wolfe Decl.*, ECF No. 439-179 (“Thrifty sent
26 site-specific letters to BPWCP identifying items that were not in ‘good working order’ . . .
27 As an *exemplar* of the types of letters that BPWCP received from Thrifty, attached as
28 Exhibit D is a true and accurate copy of one of the site-specific letters (for Facility No.

1 9554) that Thrifty sent to BPWCP in the Fall of 2011.”) (emphasis added).) The Court
2 cannot determine the liability of each of these individual Defendants by way of exemplars.
3 BP needs to identify each item of loss for which each franchisee is purportedly liable to
4 even give them a meaningful chance to dispute the facts alleged against them and whether
5 that particular item falls within the indemnity agreement. For example, BP might have
6 reimbursed Thrifty for a site condition that predated or postdated the franchisee’s
7 occupancy, such that it would not actually arise from its use or occupancy of the premises.

8 BP seeks to hold dozens of Defendants liable and must therefore identify facts that
9 entitle it to summary judgment with respect to each defendant. Exhibit I to the Wolfe
10 Declaration does not accomplish this task. (Wolfe Decl., Ex. I, ECF No. 493-238.) Exhibit
11 I simply lists each property and the total amount BP says is owed from defective conditions,
12 holdover rent, or delays in turning over alcohol licenses. (*See id.*) It does not demonstrate
13 that the facts or conditions upon which those figures are based necessarily arise from the
14 franchisees’ use or occupancy of the gas station sites.

15 BP’s burden of showing that a loss is covered by an indemnity agreement is not
16 lessened because it sued a lot of Defendants. Indeed, one of the reasons BP offers to
17 explain why Thrifty leased these gas station sites as a bundle is “efficiency of enforcement
18 of master lessee obligations and direct recourse to remedy any damages suffered by the
19 master lessor.” (PMPA SOF ¶ 5 (citing Esses Report, Risner Decl. Ex. 139, ECF No. 492-
20 178).) The implication is that it is difficult to recover from many franchisees in an efficient
21 manner, an implication that is born out in the shortcomings of BP’s Indemnity MSJ despite
22 BP’s having submitted thousands of pages of evidence in support.

23 In sum, because BP does not identify particular facts entitling it to judgment as a
24 matter of law, the Court **DENIES** BP’s Indemnity MSJ.

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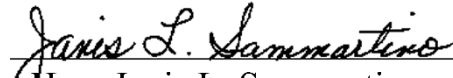
CONCLUSION

For the foregoing reasons, the Court:

1. **GRANTS** BP's PMPA MSJ;
2. **DENIES** BP's Indemnity MSJ **WITH PREJUDICE** as to the Thrifty legal costs and **WITHOUT PREJUDICE** as to the site condition and holdover costs;
3. **DENIES AS MOOT** BP's Pacific Expotech MSJ;
4. **DENIES** BP's Motion to Strike re Timeliness; and
5. **DENIES AS MOOT** BP's Motion to Strike Schiller Oppositions.

IT IS SO ORDERED.

Dated: July 18, 2016


Hon. Janis L. Sammartino
United States District Judge